



**Law Council of Australia's  
Justice Project**

Submission by  
**Community Legal Centres NSW**

**09 October 2017**

## Table of Contents

<b>INTRODUCTION .....</b>	<b>3</b>
<b>ECONOMIC DISADVANTAGE .....</b>	<b>6</b>
<b>ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES .....</b>	<b>11</b>
<b>CHILDREN AND YOUNG PEOPLE.....</b>	<b>16</b>
<b>LGBTIQ+ PEOPLE .....</b>	<b>19</b>
<b>PRISONERS AND DETAINEES .....</b>	<b>25</b>
<b>RURAL, REGIONAL, AND REMOTE AUSTRALIANS.....</b>	<b>28</b>
<b>SEX WORKERS.....</b>	<b>32</b>
<b>ADDITIONAL CASE STUDIES .....</b>	<b>34</b>

We acknowledge the Traditional Owners, Custodians and Elders of the Gadigal People of the Eora Nation, past and present, on whose traditional lands we work.

## Introduction

Community Legal Centres NSW (CLCNSW) welcomes the opportunity to make this submission to the Law Council of Australia's Justice Project. We acknowledge the extensive work done on the Project to date, including the consultation with community legal centres (CLCs) which informed many of the discussion papers.

CLCNSW is the peak body for almost 40 community legal centres in NSW. Since the very beginning community legal centres have been a cornerstone of access to justice for socially and economically disadvantaged groups in NSW. As well as delivering direct services to people who need it most, CLCs are active in the law reform process and have been instrumental in trailblazing the establishment of the legal assistance sector in NSW and across Australia.

Rather the engaging critically with the extensive research and literature review the Law Council of Australia has undertaken to date, and bearing in mind the input of community legal centres in the process to date, this contribution primarily focuses on:

- Framing some of the barriers to justice experienced by the identified groups,
- Highlighting areas where community legal centres work with these groups, and
- Collecting case studies that provide real stories regarding these areas of legal need.

The areas of the Justice Project we have responded to in this way are: Aboriginal and Torres Strait Islander Peoples, Children and Young People, LGBTQI+ People, Older Persons, Prisoners and Detainees, and Rural, Regional, and Remote Australians. These areas were chosen based on available time and resources and should not be taken as indicative of the priorities of our organisation as compared to the areas that we have not responded to.

CLCNSW has engaged with the Economic Disadvantage section of the Justice Project in a different manner. Acknowledging that the vast majority of clients of CLCs experience economic disadvantage, and building on the work of the Justice Project in highlighting the particular difficulties that these people face, CLCNSW has engaged with economic disadvantage as a structural issue – highlighting some of the broader factors leading to economic disadvantage, the scale of the problem at a societal level, as well as highlighting broad areas for reform.

In the process of formulating the LGBTQI+ People section of this submission, CLCNSW identified the absence of a group that experiences a disproportionate level of reduced access to justice: sex workers. A short inclusion has been made to highlight some of the specific barriers to justice faced by this group of people.

Another area that appears to have gone unrecognised is the barriers that people with disability face with regard to positive participation in the justice system, particularly the ability of deaf and hearing-impaired people to act as jurors. The need for legal reform in this area became evident following the

High Court decision in *Lyons v State of Queensland* last year. This goes towards a progressive understanding of access to justice for people with disabilities. We refer the Law Council to the submission of CLCNSW member organisation the Public Interest Advocacy Centre (PIAC) for more discussion of this area.

In terms of addressing issues of access to justice across NSW, CLCNSW would like to draw the Law Council of Australia's attention to the type of collaborative service delivery that has underpinned the work of community legal centres since our humble beginnings in Redfern over 40 years ago. CLCs understand that people are more than a statistic, that legal assistance is more than representation in court or a fifteen-minute 'consultation' on one specific area of law.

The first person employed at Redfern Legal Centre was a social worker, acknowledging the need to treat a person's problems holistically. Decades later, the same CLCs' Health Justice Partnership with Royal Prince Alfred Hospital is a model for cross-sector collaboration. As stated on the Redfern Legal Centre website:

*A woman hospitalised with domestic violence injuries may need legal help to get an AVO. Someone experiencing drug and alcohol issues could be self-medicating due to a debt they don't know how to deal with. The housing problems of a parent with a sick child could affect their ability to bring their child home.<sup>1</sup>*

CLCNSW invites the Law Council of Australia to, in the future, become a champion of collaborative service delivery and the work of community legal centres, broadening the Law Council of Australia's Legal Aid Matters campaign to include other organisations in the legal assistance sector – namely community legal centres and Aboriginal legal services.

In creating this submission, CLCNSW has drawn on the work of our member organisations, from collating stories through to guiding the direction and content of the submission. CLCs directly engaged in this process include: Far West Community Legal Centre, Warringa Baiya Aboriginal Women's Legal Centre, Seniors' Rights Service, Kingsford Legal Centre, Western New South Wales Community Legal Centre, National Children's and Youth Law Centre, Shoalcoast Community Legal Centre, Inner City Legal Centre, Illawarra Legal Centre, HIV/AIDS Legal Centre (NSW), Arts Law Centre of Australia, Justice Connect, Marrickville Legal Centre, Redfern Legal Centre, Refugee Advice and Casework Service (RACS), Public Interest Advocacy Centre (PIAC), and Women's Legal Service NSW.

We would also like to acknowledge the contributions made by Macquarie University students Jimmy Brackin and Matthew Pennell in formulating this submission, and refer the Law Council of Australia to the submissions from other NSW community legal centres as further examples of the views and expertise evident in the sector.

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<sup>1</sup> Redfern Legal Centre website: <<http://rlc.org.au/holistic-approach-wellbeing-health-justice-partnership>>

We thank you again for the opportunity to engage with the Justice Project and look forward to continuing engagement with the Law Council of Australia to increase access to justice in NSW and across Australia.

**If there are any questions or queries regarding this submission, please contact the CLCNSW Advocacy & Communications Coordinator, Mark Riboldi via [mark.riboldi@clcnsw.org.au](mailto:mark.riboldi@clcnsw.org.au) or (02) 9212 7333.**

Regards,

Mark Riboldi  
**Advocacy & Communications Coordinator**  
Community Legal Centres NSW

## Economic Disadvantage

Community legal centres across NSW and Australia work with people experiencing economic disadvantage on a daily basis. The lack of access to justice for people in this situation is one of the core drivers for the establishment of community legal centres in the first place.

Community Legal Centres NSW thanks the Law Council of Australia for the work they have done highlighting the specific legal issues that people experiencing economic disadvantage face, the gaps in services, and the broader costs and consequences. We also acknowledge the input of the National Association of Community Legal Centres and other CLCs in the Justice Project to date.

In terms of stories of people experiencing economic disadvantage, we refer the Law Council of Australia to all of the stories contained in this submission, and any of those provided by other community legal centres in their submissions to the Justice Project.

In response to the Justice Report, Community Legal Centres NSW would like to draw the Law Council of Australia's attention to the general state of economic disadvantage and inequality in Australia, highlighting concerning trends, established causes, as well as legislative reform that could reduce economic disadvantage, and thus alleviate a number of the barriers to justice faced by people in this situation.

While economic disadvantage effects and interacts with various aspects of people's lives, we have focussed on labour market, education, tax and housing policies, representing four significant areas for decreasing economic disadvantage and inequality in Australia.

### Scale of the Problem

Australia has outperformed almost every other OECD country in achieving 25 years of consecutive economic growth.<sup>2</sup> However, the benefits of this economic rise are not distributed equally throughout the nation.

The ABS has revealed that in 2015-2016, 20% of the wealthiest Australian households received 40% of total income. By comparison, households in the lowest income quintile received 8% of total income.

Australia's poverty rate ranks 14th highest among the OECD countries,<sup>3</sup> with 13.3% of the Australian population living below the poverty line.<sup>4</sup> The majority of the people living in poverty rely on social security payments as their main source of income.

In terms of trends, while the share of wealth of the top 1 per cent of Australians declined by two-thirds from 1915 until the late 1960s, it rose from the late 1970s to 2010. Amazingly the top 0.001

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<sup>2</sup> Penny Dorsch, Jacqueline Phillips and Charmaine Crowe, 'Poverty in Australia' (Report, Australian Council of Social Service, 2016) 7.

<sup>3</sup> Ibid 6.

<sup>4</sup> Ibid 5.

percent tripled their share of Australian wealth from 1984 to 2012.<sup>5</sup> There are a variety of measures of inequality and the overall trend is that it is increasing; the richest 1 percent of Australians received 9.5 percent of the income.<sup>6</sup>

## Causes and Effects of Economic Disadvantage

### Labour Market Policies

As of August 2017, over 700,000 Australians were unemployed.<sup>7</sup> At the same time, around 30% of the working population live below the poverty line, with many employed on a part-time or temporary basis only.<sup>8</sup> The precarious nature of temporary employment reduces the prospects of career progression, resulting in temporary employees being unlikely to improve their economic situation.<sup>9</sup> In addition, as pay conditions for most part-time or casual jobs are generally quite low, temporary employees may be required to work multiple jobs to sustain economic viability.<sup>10</sup> Temporary work also removes the benefits of flexibility and access to paid sick leave.<sup>11</sup>

These figures can be attributed to a number of factors, many of which ultimately relate to globalisation. Factors include increased consumer consumption of imported goods, outsourcing and offshoring of labour by larger companies, and the decline of traditional industries.<sup>12</sup>

While there are benefits to a globalised economy, not enough has been done to offset the negative effects. A slump in union membership and tougher restrictions on organised labour have accompanied a slump in wages.<sup>13</sup>

### Education Policies

Students from economically disadvantaged backgrounds often fall out of the education system early and miss out on tertiary education opportunities. This can be due to a multitude of factors, such as

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<sup>5</sup> Pamela Katic and Andrew Leigh, 'Top Wealth Shares in Australia 1915-2012' <<http://onlinelibrary.wiley.com/doi/10.1111/roiw.12177/full>>

<sup>6</sup> Peter Whiteford 'Trends in income inequality in Australia' <<http://search.informit.com.au/documentSummary;dn=917989038737675;res=IELLCC>>

<sup>7</sup> Australian Bureau of Statistics, *Labour Force, Australia, Detailed, Quarterly, August 2017* <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6291.0.55.003>>.

<sup>8</sup> Dorsch et al, above n 1, 26.

<sup>9</sup> Organisation for Economic Co-Operation and Development, 'Economic Policy Reforms: Going for Growth' (Report, OECD, 2012) 191.

<sup>10</sup> Rafferty and Yu, above n 5, 6.

<sup>11</sup> Bob Douglas et al, 'Advance Australia Fair? What to do about Growing Inequality in Australia' (Report, The Australia Institute, 2014) 22.

<sup>12</sup> Mike Rafferty and Serena Yu, 'Shifting Risk: Work and Working Life in Australia' (Report, Workplace Research Centre, 2010) 5.

<sup>13</sup> Josh Bornstein, 'Tough rules on unions have stifled Australian wages' <<http://www.smh.com.au/comment/tough-rules-on-unions-have-stifled-australian-wages-20170704-gx44rg.html>>

the cost of higher education, the need to start earning an income early, and, a lack of support for continuing education.<sup>14</sup>

Failing to obtain a full education can significantly limit an individual's capacity to escape economic disadvantage or intergenerational poverty, making it essential for governments to actively support students in securing an education. Policies such as reducing funding to public schools and fee deregulation for universities are inimical to this goal,<sup>15</sup> as they shift the cost burden of education onto students and their families.

### **Tax Policies**

The government has committed to reduce social welfare payments despite the fact the majority of those living below the poverty line rely on this income stream. Approximately \$5 billion in social services were cut from the budget in the 2016-2017 financial year.<sup>16</sup> This reduction was introduced even though most social welfare payments are already set below the poverty line. We note that the maximum weekly Newstart payment for a single adult being \$269.40.<sup>17</sup> These problems are compounded by the arbitrary and often prohibitive eligibility requirements for certain payments.

Simultaneously, the government continues to allow generous tax concessions which are primarily utilised by high income earners. These include the Capital Gains Tax, which ensures that an individual or trust is only required to tax on 50% of the capital gain received from the sale of an asset held for at least 12 months. This has been accompanied by a gradual reduction in the top marginal income tax rate, as well as reductions in company tax rates. For instance, the government currently plans to reduce the corporate tax rate from 30% to 25% by the income year ending 30 June 2027.

### **Housing Policies**

Currently, the Australian property market is the second most expensive in the world. Over the past decade, house prices have increased faster than incomes, with prices increasing 69% compared to a 57% rise in incomes.<sup>18</sup> This is due to a number of factors, including tax concessions for property investors such as the aforementioned capital gains tax discount and negative gearing.<sup>19</sup>

In contrast, the assistance provided to renters is limited, with some limited assistance available to those receiving social welfare benefits.<sup>20</sup> Lack of affordable housing ensures that people are less likely to purchase a home, will be paying off a mortgage for longer or otherwise paying more in rent.

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<sup>14</sup> Ibid 38.

<sup>15</sup> Australian Council of Trade Unions, 'Building a Better Future: A Strong Economy for All' (Report, ACTU, 2015) 9.

<sup>16</sup> Jacob Greber, 'Spending Cuts, Housing Gains Propel \$4.4b improvement in 2016-17 Budget', *Australian Financial Review* (Sydney) 26 September 2017, 4.

<sup>17</sup> Department of Human Services, *Newstart Allowance: How much you can get* (20 September 2017)

<<https://www.humanservices.gov.au/individuals/services/centrelink/newstart-allowance/how-much-you-can-get>>

<sup>18</sup> National Housing Supply Council 'Housing Supply and Affordability Issues 2012-2013' (Report, National Housing Supply Council, 2013).

<sup>19</sup> Douglas et al, above n 9, 14.

<sup>20</sup> Ibid.



## Potential Solutions

### Labour Market Policies

A better balance needs to be struck between the benefits and negative effects of globalisation. Measures that have been suggested to address this include subsidies for companies hiring local workers, or limiting the extent to which companies can outsource and offshore their work and their workforce. Additionally, people seeking employment should be able rely on community services to assist them find employment, such as programs aimed at boosting specific skills.<sup>21</sup>

At the same time, it is important to address the issue of temporary employees not having the same rights as permanent employees. Fair and predictable wages and conditions could be extended to temporary employees. Additionally, benefits such as annual leave, penalty rates, overtime and redundancy pay could be a condition of employment regardless of a worker's status. The provision of training to temporary workers may also assist them in transitioning into more permanent and secure work.

### Education Policies

It is widely accepted that a higher education level is associated with greater performance in the labour market.<sup>22</sup> Policies which make higher education more accessible to students are bound to have a positive effect on the economically disadvantaged. It should be noted that many Australian political figures currently advocating for deregulation of university fees, or opposing a move back to free higher education, were beneficiaries of free tertiary education between 1974 and 1989.

Incremental reforms could include providing schools with the resources to invest more time into individual student development, improving the salaries and training provided to teachers and introducing special support for at-risk students. In addition, providing universal early childhood education would improve children's physical, cognitive, and social development, which would work towards breaking the cycle of poverty that children from low socioeconomic backgrounds often fall into in circumstances.<sup>23</sup>

### Tax Policies

Over the past decade, roughly \$169 billion in revenue has been lost through tax cuts.<sup>24</sup> This has resulted in a decline of government revenue and the growth of economic inequality. The number of tax concessions available should be considered and redirected towards people who need it and decreasing the wealth discrepancy in general. Reform could include reducing or removing the CGT discount and limiting the extent to which investors can negatively gear properties.

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<sup>21</sup> ACTU, above n 11, 8.

<sup>22</sup> Douglas et al, above n 9, 20.

<sup>23</sup> Ibid 31.

<sup>24</sup> Matt Grudnoff, 'Tax cuts that broke the budget'. The Australia Institute Policy Brief No. 51, May 2013.

At the same time, the marginal rate of tax for the highest income earners could be increased. Currently, the highest tax bracket includes all Australian residents who earn over \$180,001. A new bracket could be introduced to extend to Australian's with even higher taxable incomes and taxed at a rate of 60% (the highest rate prior to 1987). This would effectively amount to a 'millionaires tax' and would ensure a more progressive taxation system overall.

### **Housing Policies**

Limiting or prohibiting negative gearing would not only increase the revenue collected by the government, but would also have the effect of reducing house prices as demand from property investors would be reduced. Measures to reduce speculative investing by overseas investors, such as the recent increase to the foreign purchaser surcharge duty, are also possible.<sup>25</sup>

At the same time, policy should focus on increasing the supply of affordable housing in Australia, particularly in states such as NSW and Victoria where property markets are more expensive. One way this could be achieved is through direct government investment in public, social and affordable housing development and introducing a levy on property owners who keep properties vacant.

### **Conclusion**

CLCNSW believes that while it is important to make the legal system more accessible to people experiencing economic disadvantage, it is equally important that we introduce systemic change to reduce the number of people in this situation in the first place.

As an organisation whose vision is access to justice for all in a fair and inclusive community, CLCNSW supports our members to deliver access to quality legal services and champion social justice. We support economic and labour law reform, as well as investment in education and housing, which deliver progressive outcomes and work towards decreasing the number of people experiencing economic disadvantage, while reducing the gap between the extremely rich and the least wealthy.

We question the notion that there is only a limited pool of funding available for community services such as health, education and legal assistance. As we have established above in relation to tax and housing policies, government revenue is in large part determined by government policy. The choice comes down to what kind of society we want to live in: a winner-takes-all competitive environment where the privileged and lucky few thrive on the backs of the majority, or a nurturing and caring society where people support each other, succeed together, and are there with a helping hand when others need it.

Through providing legal assistance, education and advocating for policy and law reform, community legal centres are committed to achieving systemic change and a more just and equitable society.

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<sup>25</sup> NSW Office of State Revenue, *Surcharge Purchaser Duty* (4 August 2017) <<http://www.revenue.nsw.gov.au/taxes/spd>>.

## Aboriginal and Torres Strait Islander Peoples

### Barriers to justice

Since invasion, NSW and Australian government policies have dispossessed, discriminated against, and destroyed significant portions of Aboriginal and Torres Strait Islander peoples' cultures. The perpetration of dispossession continues, through policies like the Northern Territory Emergency Response, paperless arrests, mandatory sentencing, incarceration stemming from fines, minor offences and bail laws, as well as police practices associated with family violence. Overall, these systemic issues disproportionately impact the lives and self-determination of Aboriginal and Torres Strait Islander people.

An example highlighted by the Human Rights Law Centre and Change the Record of the disproportionate impact of fines is the rate of incarceration for Indigenous women having risen by 248% since the Royal Commission into Aboriginal Deaths in Custody.<sup>26 27 28</sup> Melanie Schwartz attributes these statistics to how fines are used in the legal system and explains the low-level impact, high-level ramifications of fines:

*...the flow on consequences of fines can push Indigenous people further to the margins, exacerbating financial and social exclusion and creating new reasons for justice system fatigue.<sup>29</sup>*

As a result of historic and systemic discrimination and a lack of cultural safety, awareness, and inclusion, many Aboriginal and Torres Strait Islander people have a distrust of police, the legal system and social services.

Throughout NSW, community legal centres (CLCs) implement services for, and largely in partnership with, Aboriginal and Torres Strait Islander community members. These types of initiatives and partnerships have developed culturally safe services and therefore increased access to justice for Aboriginal and Torres Strait Islander people living in NSW. Some of the examples across CLCs in NSW include the Aboriginal Legal Access Program (ALAP), Wirringa Baiya's cultural awareness training and community legal education programs, and CLCNSW's Cultural Safety Workbook.

<sup>26</sup> 'Change the Record' <<https://changetherecord.org.au/>>

<sup>27</sup> Michael Bennett, 'Report addressing the skyrocketing Aboriginal and Torres Strait Islander women's imprisonment rates' *Human Rights Law Centre*, <<https://www.hrlc.org.au/news/2017/5/10/over-represented-overlooked-report>>

<sup>28</sup> Paige Bisset & Ruby Langton-Batty, 2017. 'Months in Review: April-June', *Indigenous Law Bulletin*, Vol.8, No.9, p.39.

<sup>29</sup> Melanie Schwartz, 2007. 'Low-end Penalty, Big-time Impact: The Effects of fines on Indigenous People' *Indigenous Law Bulletin*, Vol.8, No.9, pp.14-17.

## Aboriginal Legal Access Program

The Aboriginal Legal Access Program (ALAP) is a state-wide program across NSW. It aims to increase awareness among Aboriginal people of their rights, legal services available, and their likelihood to access these services. The program attempts to break down barriers to accessing justice for Aboriginal and Torres Strait Islander people through community relationships and organisational cultural awareness change within the CLC sector. This includes the full realisation of the CLC's Aboriginal Employment Strategy whereby ALAP staff are supported to engage both as Aboriginal community representatives in the CLC, and CLC representatives in the communities.

ALAP staff members engage in community development work, whilst raising the awareness within Aboriginal communities of their local CLC and legal services available to them. ALAP workers are cultural safety facilitators that promote and improve the cultural safety of CLCs in order to improve access to legal services for Aboriginal people.

ALAP workers reach out to communities to identify unexpressed legal needs and provide information and assistance as an early intervention strategy. Relationships and partnerships in project design and delivery are central to CLCs and Aboriginal communities creating culturally safe, and issue relevant, outreach programs, with warm referrals<sup>30</sup> further increasing the efficacy of the partnerships.

## Wirringa Baiya Aboriginal Women's Legal Service

Wirringa Baiya Aboriginal Women's Legal Centre is a state-wide community legal centre for Aboriginal women, children and youth. The mission of the centre is to assist Aboriginal women, children and youth who have been victims of violence.

Wirringa Baiya is a civil law service. They do not do criminal law work. Historically because of their mission there has been a large focus on statutory victim's compensation work for survivors of sexual assault, child sexual assault, and domestic and family violence. Initially this was under Assistance provided it was pursuant under the repealed 1996 legislation and the current legislation, *Victims Rights and Support Act 2013* NSW (the VRSA).

The introduction of the 2013 VRSA saw a significant reduction in payments to survivors for pain and suffering and the effective removal of private solicitors assisting clients with applications under the scheme by taking away modest payments for legal work. In the context of victims' support, these changes devalued the impact of violence for survivors and their access to solicitors for scheme applications to the already under-resourced community legal sector.

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<sup>30</sup> CLCNSW, *CLCNSW Programs* <[http://www.clcnsw.org.au/cb\\_pages/clcnsw\\_programs.php](http://www.clcnsw.org.au/cb_pages/clcnsw_programs.php)>

Also demonstrated, by default, is an ignorance of the frequent continuing impact violence has for survivors, often many years after they have escaped violence. For example, Wurringa Baiya have had clients seeking assistance to get passports for their children where their violent ex-partner of many years (e.g. 10 years) who has nothing to do with their children, refuse to sign children's passport applications. This continuing type of controlling behaviour is never adequately captured under continued pain and suffering payments.

Frequently, Wurringa Baiya advise or provide casework assistance on other civil matters, the most prominent of which are often still connected to their core work of supporting victims of violence. These other areas of civil law include care and protection, family law, and housing and debt issues.

The focus of government on the prevention of violence towards women and children is always welcome, particularly because the clients Wurringa Baiya work with are over-represented as victims of violence. However, access to justice relating to violence, after the violence has ended, is not given equivalent recognition. This is despite the fact the fallout from violence (both legal and non-legal) can be longstanding if not acute.

For more information on Wurringa Baiya Aboriginal Women's Legal Centre please visit their website: [www.wurringabaiya.org.au/](http://www.wurringabaiya.org.au/)

## The CLCNSW Cultural Safety Workbook

The CLCNSW Cultural Safety Workbook, developed by Zachary Armytage in consultation with the CLCNSW Aboriginal Advisory Group and CLCs in NSW, aims to be:

*...a catalyst for the development of respectful relationships between a CLC and the community it serves.<sup>31</sup>*

The 5 module workbook is a practical step-by-step guide in educating community legal centres how they can:

*be, and be known as places where Aboriginal and Torres Strait Islander people can access culturally safe legal assistance.<sup>32</sup>*

The workbook is constructed in a way that is easy to navigate and encouraged to be worked through at a slow, consistent pace and enables organisations to incorporate cultural safety at a structural level. The paramount message and underpinning strategy of the *Workbook* is that CLCs need to be led and informed through locally-based relationships and Aboriginal cultural awareness training.

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<sup>31</sup> Zachary Armytage, *Aboriginal Cultural Safety Workbook* (2016) p. 2.

<sup>32</sup> Ibid.

## Artists in the Black

Artists in the Black is a program set up at Arts Law Centre of Australia which provides specialist legal services to Aboriginal and Torres Strait Islander artists. Considering the special role that art plays in Aboriginal and Torres Strait Islander peoples' cultures, this specialist service is critical for providing legal advice to Aboriginal and Torres Strait Islander artists.

For more information on Artists in the Black please access their website: [www.aitb.com.au](http://www.aitb.com.au):

### *Case Study – Mandy Davis, Tobwabba Art*

“Arts Law helped me with my case by providing lawyers on a pro bono basis, which I never would have been able to afford. They were so helpful and so sensitive to my needs and always kept me up to date with everything that was happening. Knowing your rights and having people like Arts Law that provide great information and a great website that answer all those questions. It’s extremely important as an artist to protect your work.

Being part of the Tobwabba art group, we were a big advocate for protecting our work. They [Arts Law Centre of Australia] looked after the contracts and they explained it to us, and we were very well looked after. I didn’t have a clue what a licensing contract looked like or what I was signing but we were looked after and well protected in that way.

A majority of the money would still come to the artist but also a little bit goes back in to Tobwabba to keep the administration side running. We put a lot of our artwork not just in Australia but on the world map as well. They did a lot of the negotiations for our artwork, what percentage that we were to receive and they’d always come back and consult with the artists and see if we were happy about that. They also ensured that we remained the sole owners of all our artwork and places like that [the Arts Law Centre of Australia] just prove it can work when you have the right people looking after you and not exploiting you.”<sup>33</sup>

➔ Relevant to: Aboriginal and Torres Strait Islander People

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<sup>33</sup>< *When Art and Law Collide: Mandy Davis*, (Directed by Pauline Clauge, Core Films, 2013)  
<https://www.artslaw.com.au/videos-and-audio/entry/mandy-davis/>.

### *Case Study – Race Discrimination Case*

“Kingsford Legal Centre (KLC) represented an Aboriginal client who claimed she had been racially discriminated by a major retailer when subjected to a rigorous bag check when leaving their store. The client reported that other shoppers were not subjected to such a rigorous bag check. KLC lodged a race discrimination complaint at the Australian Human Rights Commission for the client.

Prior to the conciliation the retailer provided to the Commission security footage of the incident which in fact confirmed the client’s version of events. As a result, we were able to settle the matter with a significant payment for pain and suffering for the client and an agreement that the retailer produce a training video for its staff about the experience of Aboriginal people.

The money has been paid to the client but the retailer is now resisting the production of the video, despite signing a deed. This case has highlighted the difficulty clients have when enforcing conciliated agreements even with legal assistance.”<sup>34</sup>

➔ Relevant to: Aboriginal and Torres Strait Islander People

## Conclusion

The community driven programs run across community legal centres in NSW play a pivotal role in breaking down barriers as to increase access-to-justice for Aboriginal and Torres Strait Islander people, families, communities, organisations, and groups.

Enabling programs lead by Aboriginal and Torres Strait Islander community leaders through funding and resources are a powerful and effective way to improve access to justice for Aboriginal and Torres Strait Islander people. Justice reinvestment research, as well as the current justice reinvestment pilots in NSW, provides an evidence base for decision-makers to increase funding to civil and family law services to Aboriginal communities in NSW. Aboriginal access-to-justice programs delivered by community legal centres in partnership with Aboriginal communities can increase positive outcomes for civil and family law problems before they escalate into criminal law matters, which can ricochet into further entrenched systemic abuse.

Community legal centres are not a panacea to the civil and family law issues facing Aboriginal communities. However, CLCs may be a significantly untapped service for many Aboriginal communities, and accessing them largely hinges on funding, or lack thereof.

<sup>34</sup> Kingsford Legal Centre 2016 Annual Report, p. 13

[http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/2739%20klc\\_AR\\_WEB.pdf](http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/2739%20klc_AR_WEB.pdf)[http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/2739%20klc\\_AR\\_WEB.pdf](http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/2739%20klc_AR_WEB.pdf)

## Children and Young People

### Barriers to justice

Children and young people have limited independence and life experience, which leaves them vulnerable to an intimidating legal system. The complexity of the legal system creates situations where children and young people may not recognise when a problem might be of a legal nature. There is a primary need for effective legal education and outreach programs that are tailored to children and young people.

Enabling children and young people to recognise when a problem is of a legal nature has a positive impact on the outcome of their problems. There is a strong need for appropriate and accessible services for children and young people who have been in out-of-home care as well as Aboriginal and Torres Strait Islander children and young people.

### Wirringa Baiya Aboriginal Women's Legal Service

As discussed earlier, Wirringa Baiya Aboriginal Women's Legal Centre is a state-wide community legal centre for Aboriginal women, children and youth. The mission of the centre is to assist Aboriginal women, children and youth who have been victims of violence. Wirringa Baiya play a pivotal role in supporting Aboriginal children and young people, who have been identified in the justice project as being particularly vulnerable in terms of access to justice.

### Marrickville Legal Centre

Marrickville Legal Centre (MLC) provide a specific service for young people aged 25 years and under. MLC perform outreach programs with Bankstown Migrant Youth Service and Headspace in order to break down barriers for children and young people to access legal services. For more information on Marrickville Legal Centre's youth programs please see their website: [www.mlc.org.au/youth](http://www.mlc.org.au/youth)

### National Children and Youth Law Centre

The National Children and Youth Law Centre (NCYLC) is centred around the *UN Convention on the Rights of the Child* and aims to achieve equality and justice for all children and young people in Australia. Their work involves *advocating for young people, their rights, and access to justice*.<sup>35</sup> NCYLC provide an online service, Lawmail that

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<sup>35</sup> NCYLC, *national children's and youth law centre* <<http://www.ncylc.org.au/>>



*provides children and young people in Australia with personalised legal information, advice and assistance, along with quality referrals to other services that can help them.*<sup>36</sup>

Lawmail enables children and young people in remote, rural and regional areas to overcome barriers such as a lack of access to transport to be able to access legal advice services. For more information on National Children and Youth Law Centre please see their website: [www.ncylc.org.au](http://www.ncylc.org.au)

### *Case Study – Withheld Passport*

“We [the National Children’s and Youth Law Centre] received an email from a legal service that had been contacted by a family friend of 16-year-old Sarah\*, but was not able to assist. Sarah is an Australian citizen whose family was originally from overseas.

Sarah’s mother had taken Sarah overseas to be married and had returned to Australia with Sarah’s passport. Sarah had initially emailed a family friend in Australia for help. We were able to contact Sarah by email, provide her with some practical guidance on how to stay safe, connect her with the Australian Consulate and find pro bono representation in Australia to make an urgent application to a Court for her mother to surrender the passport.

The Court made this order, as well as orders that Sarah’s mother pay for her airfare to return to Australia and for Sarah to live with her family friend upon her return. Through our communications with Sarah, her family friend and pro bono counsel, we were able to secure her safe return to Australia and her care in a safe environment.

\*The names and identifying details have been changed to protect the identity and privacy of our clients.”<sup>37</sup>

➔ Relevant to: Children and Young People

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<sup>36</sup> Ibid, p.11

<sup>37</sup> NCYLC 2014-15 Annual Report, p.9

<[http://www.ncylc.org.au/about/annualreports/NCYLC\\_Annual\\_Report\\_2014\\_2015.pdf](http://www.ncylc.org.au/about/annualreports/NCYLC_Annual_Report_2014_2015.pdf)>

### Case Study – Online Threats

“We [The National Children’s and Youth Law Centre] were contacted by 16-year-old Jessica. Jessica was threatened online by a stranger that he would send some naked pictures of her to her friends and post them online. Jessica was worried about this, and also didn’t want anyone to know what was going on.

We reassured Jessica that the situation was not her fault, and that we help many young people in similar circumstances. We explained what laws the stranger was breaking and prepared a notice that she could send him privately that demanded that he delete the photos and stop contacting her.

We also gave her advice on other options she could take such as reporting his threats to the social media sites he was contacting her through and blocking him, and reporting him to the police. We encouraged her to contact free and confidential counselling services and to talk to a trusted adult. Jessica contacted us again to let us know that she had sent him the notice, and he had stopped threatening her. She also told us that if he started again she would take our advice and go to the police with evidence of what he was doing.”<sup>38</sup>

➔ Relevant to: Children and Young People

## Conclusion

The work of community legal centres such as Wirringa Baiya Aboriginal Women’s Legal Centre, National Children and Youth Law Centre and Marrickville Legal Centre, especially with respect to outreach programs and community legal education, are an important part of enabling children and young people to access legal help. Enabling children and young people to recognise legal issues and help them to overcome concerns early on is an important measure to mitigate potential long-term problems.

Community legal centres develop capacity in our network via the Community Legal Centres NSW Quarterlies: two-day meetings bringing together CLC staff four times a year. These provide opportunities for CLCs across NSW to connect and co-ordinate their work together. Areas of frequent discussion relating to children and young people include discussion and professional development relating to: family violence and migration, family relationships centres, children’s guardian working with children checks, the CLC care partner project, and the care and protection network. These meetings enable CLCs throughout NSW to make positive changes within and across their centres in order to improve access to justice for children and young people.

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<sup>38</sup> Ibid, p.14

## LGBTIQ+ People

### Barriers to justice

Despite a shift in societal attitudes towards LGBTIQ+ people, negative public attitudes remain prominent. Historic criminalisation as well as current experiences of discrimination and marginalisation has led to a lack of trust toward the police, the justice system, as well as other social services. Visibility of support and members of the LGBTIQ+ community within organisations is an important part of ensuring that LGBTIQ+ people feel able to access services.

Effective measures for LGBTIQ+ people include specialist, targeted legal services where LGBTIQ+ inclusion is visible and represented. Inner City Legal Centre and HIV AIDS Legal Centre are two examples of CLCs that provide targeted services to members of the LGBTIQ+ community.

### Inner City Legal Centre

Inner City Legal Centre (ICLC) acts as a generalist legal service for their inner-Sydney catchment area. At the same time they provide a range of specialist legal services for members of the LGBTIQ+ community. ICLC provides specialist transgender legal advice, specialist gay and lesbian legal advice, specialist intersex legal advice and specialist legal advice and court support for LGBTIQ+ people experiencing or escaping domestic/family violence.<sup>39</sup> For more information on the work of Inner City Legal Centre please see their website at: [www.iclc.org.au](http://www.iclc.org.au)

### HIV/AIDS Legal Centre NSW

The HIV/AIDS Legal Centre NSW (HALC) is a specialist community legal centre that provides free and comprehensive legal assistance to people in NSW living with HIV or Hepatitis-related legal matters. On top of their legal services HALC provide online resources to help people to access community legal education and understand their legal position.<sup>40</sup> For more information on the work of HIV AIDS Legal Centre please see their website at: [www.halc.org.au](http://www.halc.org.au)

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<sup>39</sup> ICLC, *Inner City Legal Centre Services Include* <http://www.iclc.org.au/>

<sup>40</sup> HALC, *About HALC* < <http://halc.org.au/10-2/#sthash.hv7mCzOO.dpbs>>

### *Case Study – Gender Affirmation Surgery*

“Jane and Paul Marlowe approached the ICLC in November 2014 for advice about obtaining top surgery for their fifteen-year-old transgender son, Daniel. The ICLC advised the Marlowes that although there was then no Australian case law directly on point, it was likely that Daniel’s surgery would be considered a ‘special medical procedure’ and therefore require the involvement of the Family Court. There were some elements of urgency about the surgery, as using chest binders caused Daniel significant discomfort.

The ICLC prepared affidavit evidence from the Marlowes and filed the application in the Family Court in December 2014. The application sought a declaration that Daniel be declared competent to provide his own consent to the surgery, or in the alternative that Jane and Paul be able to authorise the surgery on the basis that it was in his best interests. (The application also sought similar orders for the ongoing administration of testosterone).

The ICLC obtained affidavit evidence from a plastic surgeon and endocrinologist, and worked with the independent children’s lawyer to obtain affidavit evidence from a psychiatrist specialising in children with gender dysphoria.

The matter ultimately went to hearing in early February 2015. The Marlowes were represented by counsel, instructed by an ICLC solicitor (Hilary Kincaid). The Department of Family and Community Services and the independent children’s lawyer were also represented by counsel.

The court found that the logic of *Re Jamie* was directly applicable to the question of whether a child under 18 can get top surgery, and declared Daniel competent on the basis of psychiatric evidence to provide his own consent to both the top surgery and the ongoing administration of testosterone. The ICLC is delighted to have been able to assist.”<sup>41</sup>

➔ Relevant to: LGBTIQ+ People, Children and Young People

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<sup>41</sup> ICLC Annual Report 2014-15, p.15 <[http://www.iclc.org.au/documents/iclc\\_ar14\\_15.pdf](http://www.iclc.org.au/documents/iclc_ar14_15.pdf)>

### *Case Study – Employment Dispute*

“I just wanted to continue to work in the profession which I had worked and studied so hard to be part of. My diagnosis with HIV was hard enough, but to then lose the work I loved on top of that left me shattered. HALC was there for me, they found a great barrister to help and made sure that I got my job back and can continue to do what I love – saving lives.”<sup>42</sup>

➔ Relevant to: LGBTIQ+ People

## Conclusion

The work of community legal centres such as Inner City Legal Centre and HIV AIDS Legal Centre are essential in bridging the gap in the lack of specialist services for LGBTIQ+ people. The importance of being able to demonstrate that a legal service is a safe space for LGBTIQ+ people is clear in the case studies above for ICLC and HALC. The specific expertise at these community legal centres combined with visible inclusivity creates effective measures for breaking down some of barriers to justice faced by LGBTIQ+ people.

The history of community legal centres in NSW holds strong connections with the LGBTIQ+ community. In 1978, at the Redfern Legal Centre, volunteer solicitor Virginia Bell worked with John Terry to defend the 53 people who were arrested during the first Mardi Gras protest.<sup>43</sup> Community legal centres NSW have continued this tradition in support for members of the LGBTIQ+ through public support for marriage equality, with many community legal centres displaying marriage equality material. Since November 2013, the Community Legal Centres NSW quarterlies have been held in the meetings spaces at the AIDS Council of NSW, a prominent organisation for members of the LGBTIQ+ community. These examples show sector wide support and commitment to LGBTIQ+ access to justice issues.

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<sup>42</sup> HALC Annual Report 2015-16, p.14 <<http://halc.org.au/wp-content/uploads/2016/12/2015-2016-HALC-Annual-Report-Print.pdf>>

<sup>43</sup> Redfern Legal Centre, “Our History” <<https://rlc.org.au/about-us/our-history>>

## Older Persons

Older persons in Australia have a disproportionately low level of access to justice when compared to other groups<sup>44</sup>. An increase in the number of cases regarding elder abuse have been identified, and this causes concern<sup>45</sup> for the amount of unreported cases due to this group's lack of understanding of their legal rights. It is important to note that isolation and community attitudes such as ageism, can negatively impact the availability of services and support that older persons receive.

### Barriers to justice

Psychological readiness and low awareness of legal rights greatly reduce older people's access to justice. A notably low rate of digital literacy means that technologically advanced methods of increasing access to other members of society (such as through video conferencing and internet based services) have a disproportionately low rate of success with older persons.<sup>46</sup> As the legal issues that most frequently impact older persons are multi-faceted and are covered by various jurisdictions, it is more difficult and confusing for older persons to seek assistance as there are no cohesive services that cover all of these different areas.

It is also important to note the various factors that reduce older persons' capacity to actively participate in legal proceedings. For instance, discrimination complaints require attendance in court rooms, and this can be particularly challenging as these complaints are often made against individuals with a duty of care over older persons, such as in an aged care facility<sup>47</sup>. Additionally, advancing age increases the likelihood of developing disabilities, limiting the way in which older people access various services.

### Seniors Rights Service

Seniors Rights Service (SRS) provides information and assistance to older persons (individuals over the age of 65 years, and Aboriginal and Torres Strait Islander people over the age of 50 years) as well as assisting older persons with making legal applications and then connecting them to other services that can assist them more specifically<sup>48</sup>. The SRS is critical to ensuring that older persons with legal needs are identified and appropriate support is provided to them in cases when they may require specific or economic support.<sup>49</sup> More information on the support offered by SRS can be found at <http://seniorsrightsservice.org.au>.

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<sup>44</sup> <http://seniorsrightsservice.org.au/about-us/>

<sup>45</sup> Seniors Rights Service Annual Report 2015-16 p. 13 <[seniorsrightsservice.org.au/wp-content/uploads/2016/12/SRS\\_Annual-Report\\_2015-2016.pdf](http://seniorsrightsservice.org.au/wp-content/uploads/2016/12/SRS_Annual-Report_2015-2016.pdf)>

<sup>46</sup> Ibid, p. 24

<sup>47</sup> Ibid, p.7

<sup>48</sup> Ibid, p.4

<sup>49</sup> Ibid, p.4

### *Case Study – Guardianship Appointments*

“Seniors Rights Service was contacted by a client who was a resident in aged care. The NSW Civil and Administrative Tribunal (NCAT) had appointed his son-in-law his guardian with an accommodation function. The client stated that his son-in-law did not visit him. The client stated he wanted to explore moving into a different aged care home but the son-in-law was taking no interest in his desire to move.

“The client stated there was no-one in his family he trusted to be his guardian anymore and he wanted the Public Guardian appointed. An NCAT hearing was scheduled to review the Guardianship Order.

“The Director of Nursing offered to assist the client at the hearing but Seniors Rights Service had concerns this might raise a conflict of interest as the client had expressed the view he wanted to change aged care homes.

“Seniors Rights Service arranged for an advocate to visit the client (as the client had a speech impediment) and relay instructions to our solicitor. The Seniors Rights Service solicitor wrote to NCAT setting out the client’s wishes and wrote a letter of advice to the client setting out the law in relation to guardianship appointments.

“The Seniors Rights Service solicitor and the advocate assisted the client by explaining the letter of advice and assisted the client at the NCAT hearing. NCAT made an order appointing the Public Guardian as a guardian with an accommodation function. The client was pleased with the outcome.”<sup>50</sup>

– *Seniors Rights Service*

➔ Relevant to: Older Persons, People Living with Disability

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<sup>50</sup> Seniors Rights Service Annual Report 2015-16 p. 17 <[seniorsrightsservice.org.au/wp-content/uploads/2016/12/SRS\\_Annual-Report\\_2015-2016.pdf](http://seniorsrightsservice.org.au/wp-content/uploads/2016/12/SRS_Annual-Report_2015-2016.pdf)>

### Case Study – Unfair Loan

“[Seniors Rights Service] clients were asked to sign loan documents by their youngest son, who was a lawyer at the time. He wanted to purchase a property with his wife and misled our clients into thinking the loan documents were a reference for a loan he was entering into with the bank.

“Our clients are from Bosnia and speak English as a second language. Our clients were induced to sign documents under the misapprehension that the documents were for a loan between their son and the bank for house in Vaucluse. The clients stated that they trusted their son. The Loan documents were in fact in the clients’ names as borrowers with a mortgage securing the clients’ home to the Bank.

“The clients were never approached by the bank and never received the loan proceeds in their account. The husband was on a disability support pension and his wife had no income as she was the carer for children, and the clients had no capacity to service repayments on the loan. The loans were entered into in 2010. The Bank issued a default notice in August 2015 and filed and served a Statement of Claim on the clients in November of that year.

“Seniors Rights Service prepared a defence for our clients against the bank on the basis that the contract was unjust under the Contracts Review Act 1980, a cross claim against the bank seeking that the loan be declared void and the mortgage be set aside under the Contracts Review Act 1980, and a cross claim against the youngest son in tort of deceit and unjust enrichment in equity.”<sup>51</sup>

➔ Relevant to: Older Persons

## Conclusion

Older persons require a large amount of support due to the general vulnerability of persons over the age of 65 years. As a result of this vulnerability, their increased reliance on support services, and the lack of effective government-initiated legal assistance programs, community legal centres such as SRS have filled in this space. Promotion of multi-faceted services, such as having health professionals refer clients to CLCs,<sup>52</sup> would be beneficial to ensuring that services are provided where an individual’s understanding of their legal rights is limited. Increasing the funding of groups such as the Seniors Rights Service would greatly increase their capacity to provide these services to members in aged care facilities through additional outreach programs.<sup>53</sup>

<sup>51</sup> Seniors Rights Service Annual Report 2015-16 p. 17 <[seniorsrightsservice.org.au/wp-content/uploads/2016/12/SRS\\_Annual-Report\\_2015-2016.pdf](http://seniorsrightsservice.org.au/wp-content/uploads/2016/12/SRS_Annual-Report_2015-2016.pdf)>

<sup>52</sup> Ibid, p.27

<sup>53</sup> Ibid, p.48



## Prisoners and Detainees

Prisoners and detainees, who have been found guilty of a criminal act and incarcerated, have certain needs and issues that require special consideration and support due to their specific circumstances. Children and young people in particular, require as much assistance as possible to help reduce recidivism later on in life, as many adult prisoners and detainees have a history of incarceration in their youth.

### Barriers to Justice

Due to the relationship between police and prisoners and detainees, there is often an aspect of mistrust limiting the likelihood of these people to contact legal support services in an attempt to gain legal counsel, as there is often a 'them versus us' mentality with any group that can be connected to courts and the legal system. There is also a lack of communication about rights and responsibilities that prisoners and detainees are entitled to whilst they are incarcerated, and this can have a detrimental impact on their capacity to reintegrate into society.

The likelihood that support services will be utilised by this group is reduced as a result of the difficulty for solicitors to organise meeting times with clients. Mistrust of technology and lower levels of digital literacy limits the capacity of prisoners and detainees to communicate with solicitors. An aversion to discussing legal matters over the phone further reduces communication.

Despite the limitations that CLCs face when attempting to support these groups, there are quite a number of legal centres that provide assistance to prisoners and detainees, with many rural, regional, and remote (RRR) CLCs providing such services.

RRR CLCs use a number of techniques to circumvent the difficulties that are presented as a result of poor management of outreach services by detention centres. Additionally, the reliance of prisoners and detainees on community legal centres that provide services to detention centres within their area mean that if a prisoner is transferred to another detention centre, there is very little that CLC can do to continue that support.

### Justice Connect

Justice Connect provides legal support to clients that are either in the earlier stages of being imprisoned, currently incarcerated, or recently released.<sup>54</sup> Justice Connect attempts to maximise its impact by undertaking outreach programs and connecting with community legal centres that specialise in specific issues, such as the Women's Legal Service and various RRR CLCs.<sup>55</sup>

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<sup>54</sup> Justice Connect, 'Closing the Revolving Door', <https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/closing-revolving-door>

<sup>55</sup> Justice Connect 'about us' page <https://www.justiceconnect.org.au/who-we-are/about-us>

More information on outreach services and Justice Connect’s support programs can be found on their website: [www.justiceconnect.org.au](http://www.justiceconnect.org.au)

## Far West Community Legal Centre

Far West Community Legal Centre (FWCLC) works closely with communities in the rural and remote areas in Western New South Wales. Because of the rural nature of this CLC, they receive a large number of Aboriginal and Torres Strait Islander clients and perform active outreach services to Aboriginal and Torres Strait Islander communities.<sup>56</sup> FWCLC also provides outreach to Broken Hill Correctional Centre, and through providing legal counsel to these clients, the CLC assists in the reintegration of these members into society,<sup>57</sup> for example, by assisting clients freeze debts whilst they are incarcerated to ensure they aren’t further disadvantaged upon their release.<sup>58</sup> Further information on Far West CLC can be found on their website at: <http://www.farwestclc.org.au>

### *Case Study – Domestic Abuse Support Services*

“Access to information regarding domestic abuse support services is very low in RRR prisons, and as a result very few women who have been victims attempt to get counseling or request assistance or reclamation.

This was noted when a solicitor at one of these prisons held a discussion with victims of domestic abuse, which at that point was largely identified as impacting a large portion of the incarcerated women, with only 6 attendances and 5 follow-ups, despite the hundreds of incarcerated women. Of the 5 follow-ups, none of these individuals were previously aware of this service.”

– *Western NSW CLC Solicitor*

➔ Relevant to: People Who Experience Family Violence, Prisoners and Detainees, RRR Australians

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<sup>56</sup> Far West Community Legal Centre Annual Report 2013-14, p. 23 <http://www.farwestclc.org.au/annual-report>

<sup>57</sup> Ibid, p.19

<sup>58</sup> Ibid, p.23

## Conclusion

Prisoners and detainees are particularly disadvantaged due to a variety of factors that need to be addressed if there is to be any improvement in closing the gap in their access to justice. A main cause of disadvantage is through the nature of their incarceration: being incapable of contacting support services or even being aware of their rights can have a detrimental impact on how they access support.<sup>59</sup>

Another key area that needs change is the way that prisoners and detainees are becoming more reliant on services such as CLCs to take the role of government appointed services, such as the example in the case study above. Finally, by increasing the time-windows in which clients can have meetings with CLC provided solicitors, allowances can be made for these legal professionals having to travel large distances (such as in RRR areas) to correspond with their clients.<sup>60</sup>

There has also been distinct success by linking services (such as through health and legal support), whereby general practitioners are able to advise a prisoner to contact legal services if they identify a legal matter that the prisoner has not addressed.

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<sup>59</sup> Shoalcoast Annual Report, 2015 p.16 < <http://rubratec.com.au/wp-content/uploads/2015/10/annualreport15.pdf> >

<sup>60</sup> Justice Connect, 'Closing the Revolving Door', <<https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/closing-revolving-door>>

## Rural, Regional, and Remote Australians

Rural, Regional, and Remote Australians (RRR Australians) are a group that has fallen victim to a notable amount of disadvantage. Because this group is comprised of individuals that live in remote and hard to access areas in Australia, predominantly in rural areas, they suffer from a number of hardships that are unique to them<sup>61</sup>.

One of the primary issues that they have to deal with is a lack of judges and courts in easy to access areas. Cases are often heard in local Sydney courts, despite the often-considerable distance individuals would have to travel to attend these hearings. Additionally, due to the high rate of Aboriginal and Torres Strait Islander people in this group, many issues with access that these individuals experience are often exacerbated by this locality. RRR Australians also need support services that are tailored to their needs, and are often disproportionately impacted by sweeping federal and state legislation, such as vehicle licence suspension laws.

### Barriers to justice

As with the issues that impact this group, the barriers that restrict RRR Australians are unique to the situation within which these individuals find themselves. One notable example of this is known as 'postcode justice', which outlines how individuals from these groups are negatively impacted by laws and procedures based upon their geographical location. Additionally, because communities in this area are very interpersonal, many issues can restrict or impact on an individual's capacity or urge to seek legal assistance. Finally, because many RRR Australians can be identified as 'asset rich, financially poor' individuals, they often are unqualified to accept pro bono legal assistance from initiatives due to the value of property they might own, even if they do not have the finances to pay for private legal assistance.

### Western New South Wales Community Legal Centre

Western New South Wales Community Legal Centre (Western NSW CLC) operates out of Dubbo and encompasses the majority of Northern and Western rural NSW. This community legal centre faces a difficult task in providing support services to this very large area, whilst also offering legal support to prisoners and detainees in the Wellington Detention Centre. Additionally, whilst staff of Western NSW CLC are not actively trained in many non-legal social areas, Western NSW CLC also assists community members with non-legal services in instances where the centre is aware of the impact that resolving a relevant social issue early may have on reducing future legal issues. Western NSW CLC outlines more of the services they provide on their website, found at: [www.wnswclc.org.au](http://www.wnswclc.org.au)

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<sup>61</sup> Illawarra Legal Centre Annual Report, p.4 <[http://www.illawarrallegalcentre.org.au/images/stories/ILC\\_AnnRep\\_2014-15\\_WEB-4.pdf](http://www.illawarrallegalcentre.org.au/images/stories/ILC_AnnRep_2014-15_WEB-4.pdf)>

## Shoalcoast Community Legal Centre

Due to the large number of RRR areas in each direction from Sydney, CLCs such as Shoalcoast Community Legal Centre exist to provide the same services to the communities south of Sydney that Western NSW CLC provides to the areas in the West, reaching all the way south to the Victoria border. Additionally, Shoalcoast CLC provides support to South Coast Correctional Centre, providing assistance to prisoners who are facing legal issues. Shoalcoast CLC provide information for prospective clients on their website, as well as outlining outreach services and providing contact information: <http://shoalcoast.org.au>

### *Case Study – Child Support Issues*

“Our client, the father of 3 children under 18 years of age had come to Australia with his children on a refugee visa, the mother had left them with him and gone overseas with another partner and not returned nor been in regular contact for over 12 months. The father had little knowledge of the legal system in Australia and was in need of advocacy and legal advice.

The father believed he had registered for child support more than 12 months earlier but when the Child Support Solicitor rang the Department it was found that the matter was registered for ‘private collect’. Therefore, the Department was not following up arrears and this was the reason he was not receiving any child support. The Child Support Solicitor changed the collection to ‘child support collect’ and also let the Department know that the mother was overseas. The matter was then referred to international division of the Department so that the matter could be followed up from there.

The father had relatives overseas and one had recently died. He was offered sponsorship to pay for himself and the children to go overseas for 3 weeks for a ‘lifting of mourning’ ceremony. As the mother refused to agree to the issuing of passports for the children, the matter has been taken on by the Child Support Solicitor and is listed for hearing in the near future to enable passports to be issued without the mother’s consent. The Child Support Solicitor is also seeking sole parental responsibility for the father so that the father can make major decisions for the children.”<sup>62</sup>

➔ Relevant to: RRR Australians, Recent Arrivals to Australia

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<sup>62</sup> Illawarra Legal Centre Annual Report 2014-15, p.31  
<[http://www.illawarrallegalcentre.org.au/images/stories/ILC\\_AnnRep\\_2014-15\\_WEB-4.pdf](http://www.illawarrallegalcentre.org.au/images/stories/ILC_AnnRep_2014-15_WEB-4.pdf)>

### *Case Study – Litigation & Default Judgment*

“A Western NSW CLC solicitor assisted a client with a debt matter. The client was a middle-aged man with an acquired brain injury. Initially the registrar of the legal centre had assisted him to draft the Statement of Claim and also Notice of Motion for Default Judgment. However once Default Judgment was ordered by the court, the defendant applied for the Default Judgment to be set aside.

The solicitor assisted the client to reply to the Notice of Motion to Set Aside Default Judgement. They then represented the client at the hearing before the registrar. The Default Judgement was set aside and the matter moved forward to mediation. At mediation, the mediator did not allow the client's mother to attend. The impact of the client's brain injury is that he gets confused with information, and the confusion makes him feel angry and frustrated. The mediation was not successful.

The matter moved forward and the solicitor assisted the client to draft an affidavit to the court. The hearing was listed for a day that they were on outreach and was therefore unable to attend. The solicitor approached Disability Advocacy for support and assistance. The closest office to the solicitor was approximately 2-2.5 hours from Western NSW CLC. Luckily, DA did have an advocate available who attended the court as a support person for the client. They did not act as a representative. The client was successful in obtaining Judgment, however Western NSW CLC are now going through the process of enforcing that judgment.

Solicitor's remarks: “Firstly the assistance the client got from the registrar to start off with is no longer occurring. The understanding that we have received from the local courts in this area is that the registrars have been given a directive to not provide this assistance anymore. This has had an on-flow effect to our office, and in the last 6-8 months we have had a large increase in small claims civil debt matters. Secondly there is no Disability Advocacy service in Dubbo. There is a very large lack of support for clients with an intellectual disability in this area. With the impending cuts to DA, I assume this will have further implications in the future.”

➔ Relevant to: RRR Australians, Persons Living with Disability

## Conclusion

RRR Australians have specific social and legal needs that are unreflected by much current legislation, which instead better suits suburban and city dwelling Australians. As RRR Australians have very little access to courts, and therefore the judicial processes that they would be able to utilise, increasing the number of rural courts would have a significant impact on achieving access to justice in these communities<sup>63</sup>.

Due to the fact that community legal centres are stretched thin across rural, regional, and remote areas, it is necessary to both better promote these existing centres and provide additional government resources<sup>64</sup> to ensure that individuals with legal needs and no means to access legal services are not denied access to justice. Additionally, the provision of pro bono solicitors in rural areas is significantly low, and legislation that does not take into account the unique circumstances of rural individuals<sup>65</sup> has resulted in the practice of 'post-code justice'.

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<sup>63</sup> Illawarra Legal Centre Annual Report 2014-15, p.3

<[http://www.illawarralegalcentre.org.au/images/stories/ILC\\_AnnRep\\_2014-15\\_WEB-4.pdf](http://www.illawarralegalcentre.org.au/images/stories/ILC_AnnRep_2014-15_WEB-4.pdf)>

<sup>64</sup> Shoalcoast Community Legal Centre Annual Report 2015 p.8 <<http://rubratec.com.au/wp-content/uploads/2015/10/annualreport15.pdf>>

<sup>65</sup> Ibid, p.7

## Sex Workers

One group of people unrepresented in the Justice Project is sex workers. All of Australia's States and Territories have different laws and regulations for sex workers. NSW is the only state which has fully decriminalised sex work. This has been recognised by organisations such as Sex Workers Outreach Program (SWOP), Scarlet Alliance and Touching Base as best practice model for sex work. Scarlet Alliance CEO Jules Kim has stated that "decriminalisation of sex work has delivered outstanding outcomes for sex workers' health and safety and that of the general community."<sup>66</sup>

### Barriers to justice

Licensing regimes which exist in the Northern Territory, Queensland and Victoria have been criticised for creating a two-tiered system where a majority of sex workers or sex work organisations cannot or choose not to meet compliance requirements. Scarlet Alliance has said:

*Licensing limits sex workers' choices over our working environment and style of work, by providing incentives and punishments to effectively coerce sex workers into Government-approved work. Licensing means reduced options for sex workers and reduced control over working environments and safety.*<sup>67</sup>

A statement from Vixen Collective demonstrates another serious concern around licensing:

*Within the licensing system in Victoria, Victorian police fulfill an enforcement role, which creates significant barriers for sex workers accessing police assistance.*<sup>68</sup>

Despite a best-practice model in NSW, sex workers still face considerable barriers to accessing justice due to societal stigma and misunderstanding of the legal position for sex workers. As a result of societal stigma, workers do not feel safe using their real names, which is a requirement in order to take a matter to court. Instances of sex workers not being taken seriously by police can be attributed to stigma as well.

### Organisations Making a Difference

Scarlet Alliance and Sex Workers Outreach Program (SWOP) provide resources on their websites for sex workers to know their rights and how to access support. Inner City Legal Centre provide a service specifically for sex workers.

To find more information on SWOP visit: [www.swop.org.au](http://www.swop.org.au)

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<sup>66</sup> Scarlet Alliance, *WORLD RENOWNED, BEST PRACTICE MODEL OF SEX WORK DECRIMINALISATION TO REMAIN IN NSW 10 May 2016* (2016) <[http://www.scarletalliance.org.au/media/News\\_Item.2016-05-10.1825](http://www.scarletalliance.org.au/media/News_Item.2016-05-10.1825)>

<sup>67</sup> Scarlet Alliance, *SEX INDUSTRY LAWS – Victoria* (2017) <<http://www.scarletalliance.org.au/laws/vic/>>

<sup>68</sup> Ibid.



To find more information on Scarlet Alliance visit: [www.scarletalliance.org.au](http://www.scarletalliance.org.au)

To find more information on Inner City Legal Centre's sex worker program visit: [www.iclc.org.au/sls](http://www.iclc.org.au/sls)

### *Case Study – Workplace Conditions*

It's really common in brothels, parlours and escort agencies for employers to enforce a fines system for breaking rules of the establishment, for example; not washing dishes or wearing the wrong stockings. These types of fines systems should not be enforceable and yet are docked from workers' pay. Workers often feel they have no recourse.

- *Inner City Legal Centre*

➔ Relevant to Sex Workers

### *Case Study – Owed Money*

A sex worker who was owed \$23,000. The person settled for \$5,000 because they didn't want to go to court. The need to address the reasons why sex workers are afraid to go to court are a serious concern as a barrier to accessing justice.

- *Inner City Legal Centre*

➔ Relevant to Sex Workers

## Conclusion

The Inner City Legal Centre's sex worker legal service is another important service who works closely with Scarlet Alliance and SWOP. The work performed by sex worker run organisations scarlet alliance and sex workers outreach program are pivotal in helping sex workers to access legal help. Support for these services, and in particularly working closely with the sex worker run organisations, is of utmost importance moving forward to breaking down barriers for sex workers and improving access to justice for them.

## Additional Case Studies

### *Case Study – Disputes with Government Agencies (NSW Victims Services)*

We acted for a client who had some learning difficulties. We helped her with 5 ‘*reassessment matters*’ under Victims Right Support Act. These matters dealt with the redetermination of finalised victims compensation matters for a group of people who had been unfairly caught by the retrospective application of the Victims Rights Support Act.

The reassessment process was to substitute the more recent lower awards received with higher more generous awards under the repealed legislation the clients had lodged their applications under. However this client’s reassessment decision resulted in her receiving only 3 higher awards instead of the 5 she was entitled to. This was an incorrect and flawed outcome. Had the client not been legally represented by our service it is highly likely this mistake would not have been rectified and she would have been significantly shortchanged. For somebody already financially disadvantaged this is not fair.

Aboriginal women and children are one of the most marginalised groups in our society. They are disproportionately adversely affected by the changes to criminal compensation law in NSW and thereby indirectly but systematically discriminated against.

➔ Relevant to: People Experiencing Economic Disadvantage, Aboriginal and Torres Strait Islander People, People Living with Disability

### *Case Study – Compensation for Assault*

We acted for a client whose ex-partner strangled her. Strangulation is recognised as a significant red flag for a potential domestic homicide. Under the 2013 VRSA despite evidence of strangulation the client was awarded only \$1,500 even after exhausting all appeals of this decision. This type of assault was not classified as warranting the higher payment available of \$5,000 despite the fact there is a maximum sentence of 25 years for a strangulation offence under section 37 of the *Crimes Act 1900* NSW which has the same maximum sentence for a wounding or grievous bodily harm offence under section 33 of the same Act.

➔ Relevant to: People Who Experience Family Violence

### *Case Study – Carer’s Allowance*

We advocated for a client with FACS about the abrupt discontinuation of her carer’s allowance for a family member she was looking after. The reinstatement of the allowance avoided the potential problem of going into further rental arrears with the NSW Department of Housing and consequences flowing from that.

The most important advocacy work in this jurisdiction however is directed towards early intervention where possible to help prevent the removal of Aboriginal children into out of home care (where they are already over represented) to assistance with the path towards restoration of children if possible.

➔ Relevant to: Children and Young People, Aboriginal and Torres Strait Islander People

### *Case Study – Rural Access to Justice*

“Even though debt is incurred in a remote area, with both parties residing in the area, it is still held in Sydney local Courts. Very remote town an hour from Dubbo, representative of being finance poor, asset rich. There was a postal issue (relating to rural areas such as farm and house differences in postal service) which resulted in a lack of communication which resulted in the client only being aware of the issue when they were served a notice of bankruptcy.

“There was one part-time JP in the nearby town, whom did not witness documents correctly, as a result the client had to drive over an hour to get the documents witnessed correctly by the solicitor. The CLC provided services to assist client despite the fact that they weren’t representing the client. The federal court portal will only waive the filing fee for individuals if CLCs provide a letter detailing their support or are acting on the record. The client had to seek permission to use a phone to be present in court due to the 8-hour travel distance between her and the courts. Further issues are present with phone clients being talked over by the prosecution’s solicitor, and with the difficulty for them to engage appropriately with the court over the phone.”

- WNSWCLC Solicitor

➔ Relevant to: RRR Australians, People Experiencing Economic Disadvantage

### *Case Study – Rural Access to Justice*

“Client came to see me about obtaining ‘Power of Attorney’ for his uncle. The client was on an old aged pension himself, Aboriginal about 65 years of age. It became apparent that the client needed to make an application to the Tribunal for financial management for his uncle. His uncle also had medical issues, however we were not able to obtain a medical report for two reasons; Firstly, due to cost, secondly, due to the uncle would have to travel to Dubbo some two hours to see a medical professional. The matter was quite complex, the uncle was housed in a ‘multi-purpose’ hospital which brings in different laws to that of an aged care facility.

“I sought the assistance of the Seniors Rights Service for specialist advice in that area. After a few months correspondence with the hospital and assistance from SRS we made the application to the tribunal. The client had to self-represent (I was on outreach at the time and no other representation service in this area). The hearing was held in Dubbo. The client still had a two-hour drive from home to get to the hearing. He had car troubles, but was lucky a friend could drive him.

“The client only has a home phone, so communication with him was difficult at best. We only go on outreach to that town once a month, so this created large delays in getting the documents finalised. I was lucky that the client had a friend from the Men’s Shed who would assist with sending emails and would allow me to ring his mobile when they were both at the Men’s Shed. Even things like obtaining Centrelink documents are much more difficult in a rural town. Although the client was listed as a contact on his uncle’s Centrelink account, there is only a Centrelink agent once a week in that town and you need to go in the mornings. Otherwise the client has to spend long times on the phone.

“Rural towns also have issues with everyone knowing each other. The staff at the hospital had ordered medicine for the uncle from the chemist, and because the staff at the chemist knew our client was the uncle’s nephew then they were trying to force him to pay for the medicine (even though he had no legal obligation to do so).

“One of the main issues with the Tribunal is filing documents and receiving correspondence. Some divisions of NCAT will only receive documents by post. Although you can file documents via email/post in this division, when you have a client with no email they can only receive correspondence via post. It can take up to 10-14 days to get post from Sydney to this or other rural towns. This creates further delays in the matter.

- WNSWCLC Solicitor

➔ Relevant to: RRR Australians, Older Persons, Aboriginal and Torres Strait Islander Peoples, People with Disability

### *Case Study – Rural Access to Justice and Employment Law*

“I assisted a client with an employment law general protections matter. The first stage for these types of matters is to go to the FWC for a conciliation. The majority of those are held over the telephone. The majority of our clients, if we consider them disadvantaged we will at least assist them with the paperwork and possibly represent at conciliation. The client was dismissed while on leave with a workplace incurred injury. He was a middle-aged man, who due to the workplace injury had a temporary arm disability.

“The matter did not settle at conciliation. The client elected to go to court. I assisted the client to draft the application and file it with the FCC. There were issues that arose with filing through the online portal. Many confusing options to file, and the application was refused because of the wrong selection in the portal. After many phone calls with the registry it was finally filed. This matter I was successful with the application to waive the filing fee, however this is not always the case for the clients. The first mention date was listed in Sydney where the FCC is based. The client due to his arm injury was unable to drive.

“Luckily, I was in Sydney for Quarterlies and I appeared for the client in person. The court is located approximately 8-hours away by car from my client. At that stage, when the client was unable to drive it would be almost impossible for him to attend the mention if I did not assist him. I sought leave for the next mention to appear via telephone. However, for the mediation the court ordered it to be in person and the other side would not agree for the client to appear via telephone. Luckily, we obtained pro bono assistance from a Sydney law firm who acted for the client.

“There needs to be more avenues for rural and remote clients to access the FWC and FCC. Rural clients should not be forced to attend Sydney, it imposes further disadvantage on an already disadvantaged group of people. It also places strain on a lack of resources CLC.”

- *WNSWCLC Solicitor*

➔ Relevant to RRR Australians, People with Disability

### *Case Study – Home Care Package Support*

“An older woman living in her own home had been receiving support from a Home Care Package, and had her hours reduced when she was transferred to a Consumer Directed Care (CDC) Package. The advocate argued that as an existing client, her hours could not be altered by the provider. This advice was backed up by the CDC Helpline and the provider was asked to restore the woman’s hours to ensure she had enough care and service hours so she could remain in her home.”

– *SRS Annual Report*

➔ Relevant to: Older Persons

### *Case Study – Home and Community Care Service*

“Our client lives in the city and has mobility and speech issues due to several strokes. The client was transitioned to Consumer Directed Care, from a Home and Community Care (HACC) service. The client wanted to return to the HACC service which she was happy with, which offered more hours and staff whom she knew and who could communicate with her. The Seniors Rights Service advocate was able to visit the woman in her home and listen to her wishes. The advocate was able to contact the CDC coordinator and relay the client’s preference to have her HACC services reinstated. The client had not entered into an agreement with the new CDC service so this service was terminated.

“The woman was easily returned to the service of her choice, which was happy to accept her back and felt able to continue to provide services and care, with the addition of a case manager. This was arranged with an independent brokered service. The manager of the CDC service was not satisfied with this outcome as she felt the woman needed more care. But in fact the client has a right to choose what benefits her, and to be assisted with her right to make her own decisions and choices.”

– *SRS Annual Report*

➔ Relevant to: People Living with Disability, Older Persons

### *Case Study – Unintended Debt*

“An elderly man received home care services for three months, and then opened a letter stating he was in debt to \$3,500. He had not been read the agreement before he signed it, nor had fees been explained or a care plan discussed. The advocate intervened in the matter and the manager admitted they were at fault for not assisting the man to understand the process and fees. The advocate also suggested the manager assist the man to apply for financial hardship as he did not have the money to pay. The manager assured the advocate their procedure would change and consider the needs of frail older people to access their service.”

– *SRS Annual Report*

➔ Relevant to: Older Persons, People Experiencing Economic Disadvantage

### *Case Study – Poor Treatment at Nursing Home*

“The husband of a resident in an aged care home felt his wife was being victimised after she complained about being left sitting in her wheelchair all day. Staff said it was too difficult to transfer her back to bed to rest. Following the advice of an advocate, the man wrote to the care manager expressing his concerns and requesting an assessment by the physiotherapist for a suitable lifter and appropriate sling. The woman was soon provided with a sling which was easy for her to take off while she was sitting in her wheelchair, and staff were more aware of her comfort needs. The issue was dealt with promptly and there was no need for a follow up meeting with the advocate to reinforce the residents’ rights.”

– *SRS Annual Report*

➔ Relevant to: People Living with Disability, Older Persons

### *Case Study – Poor Treatment at Nursing Home*

“The husband of a resident living with dementia in an aged care home was concerned his wife’s teeth were not being cleaned. Staff had not been able to clean the woman’s teeth for several days. The advocate explained the role of the Dementia Behaviour Management Assessment Service, and the Dementia Helpline in providing assistance in behaviour issues and assisting with clinical care. The man was also advised to contact a mobile dentist to assess and attend to his wife’s oral hygiene, which he did. The dentist was disturbed by the lack of oral care for this woman which he viewed as neglect, and planned to inform the Aged Care Complaints Commissioner to look into the matter”

– *SRS Annual Report*

➔ Relevant to: Older Persons, People Living with Disability

### *Case Study – Post Release Support*

On release from Wellington Prison, a woman was given a train pass and now cannot be located for after prison services. It is known that this woman was the victim of domestic abuse and that she feared for her safety upon release. As a result, it is anticipated that she is staying with a close friend or family member but she cannot be reached to ensure her protection because of the methods she is using to remain hidden. A lack of post-release support provided by the prison itself to disadvantaged individuals such as this is an indication of an area, which needs to be amended. Despite the fact that her history of abuse was known to correctional centre staff, she was not provided any additional support, or given any information for support services to contact.

➔ Relevant to: Prisoners and Detainees, People Who Experience Family Violence, RRR Australians



### *Case Study – Aboriginal Health Justice Partnership*

Evaluation of Aboriginal Health Justice Partnership in December 2015 which included 2 surveys (client feedback and pre/post training professional development evaluations) to assess the immediate aims of the program:

- "To provide effective early legal intervention to Indigenous people who may not otherwise access legal advice
- To build capacity amongst health professionals to identify legal issues; and
- To improve health outcomes for clients."

The evaluation showed; "After receiving advice, 100% of clients surveyed stated that they felt less stressed now that they knew more about their legal situation. After attending training, 88% of medical staff surveyed felt that they now had the required skills and knowledge to effectively identify legal issues experienced by patients as a result of the training."<sup>69</sup>

Fines Waived for Homeless Patient:

"Adam\* told his health professional that the government had removed money from his bank account. As the health professional had been trained in identifying legal issues, she was aware that the RLC solicitor could provide assistance. Adam was able to see the solicitor at the hospital straight away after his medical appointment. RLC's solicitor determined that there was a garnishee order from the State Debt Recovery Office for unpaid fines. As Adam was homeless, the solicitor advised that his fines could be written off under the legislation. RLC's solicitor contacted the State Debt Recovery Office immediately and advocated for Adam. The money was deposited back into his account that day, and further outstanding fine debts were removed. If it wasn't for the increased capacity of Adam's health professional to identify legal issues and for immediate access to RLC's solicitor, due to her being based within the hospital, it is unlikely that Adam would have been able to access legal advice in relation to his debt issue. \*Not his real name."<sup>70</sup>

- ➔ Relevant to: People Experiencing Economic Disadvantage, Aboriginal and Torres Strait Islander People, Homeless Persons

<sup>69</sup> Redfern Legal Centre 2015-16 Annual Report, p.32

<[https://rlc.org.au/sites/default/files/attachments/RLC%20Annual%20Report%202016\\_ONLINE.pdf](https://rlc.org.au/sites/default/files/attachments/RLC%20Annual%20Report%202016_ONLINE.pdf)>

<sup>70</sup> Ibid, p.33

### *Case Study – Successful Case for Young Aboriginal Mother*

“A collaborative approach between a CLC and a private legal firm resulted in a rare win for a young Aboriginal mother.

“In 2015, Wirringa Baiya Aboriginal Women’s Legal Centre (WB) and a private legal firm joined forces to provide urgent representation for a client in the Children’s Court. The client was an Aboriginal woman who had just given birth. The client and her husband had overcome many hurdles to fix their ‘parental deficiencies’. Notwithstanding this, FaCS notified the client that her newborn would be removed from her care within three days (on the grounds that she has other kids in care).

“The client had become disillusioned by the Children’s Court process after unsuccessfully trying to get her other children back. The client felt she was not being heard or understood by the court. The client was no longer engaging with her private solicitor. The client met WB staff during a WB CLE session at ‘Weave Women and Children’ (a week before giving birth). The client said she felt comfortable talking to WB and wanted WB to represent her in court. WB did not have the resources to provide court representation. Instead WB offered to work collaboratively with the client’s solicitor.

“The private solicitor supported the collaborative approach in getting the client’s matter ready for an urgent interim hearing. WB received client’s instructions, drafted the affidavit and collected the supporting evidence and then passed the baton to the client’s private solicitor for representation.

“On the first court date, WB filed the client’s affidavit and supporting evidence and effected service with only moments to spare. Leave for an interim hearing was granted and the matter was strongly contested. The client’s private solicitor did a tremendous job representing the client. The Children’s Court made interim orders that the baby remain with the parents. The parents were elated with the outcome, up until FaCS notified their intention to appeal the Children’s Court decision in the Supreme Court. Outrageously and unbeknown to the parents or the Court, FaCS had removed the baby from the maternity ward (whilst the matter was being heard) and refused to return the baby to the parents.

“Later that evening, the Supreme Court part heard the application and ordered the baby be delivered to the parents immediately and adjourned to the following day. FaCS subsequently withdrew their appeal application and the baby has continued to be cared for by his doting parents.

Further information: Jenna Dunwoodie, Solicitor at Wirringa Baiya Aboriginal Women’s Legal Centre.”<sup>71</sup>

➔ Relevant to: Aboriginal and Torres Strait Islander People, Children and Young People

### *Case Study – Scarlet’s Story*

For young people like Scarlet, this is their reality. There are thousands of trans and gender-diverse young people in Australia, kids who have known since childhood that the body they were born into meant they were assigned a gender they never belonged to. “Things are often harder for me than for my friends,” said Scarlet. “Going out, or getting a job is quite daunting. To be around other people in clothes I’m probably not even really going to feel comfortable in for several hours a day – other kids don’t need to think about it. I think that that’s something that a lot of these stories don’t really focus on, like, jobs and stuff, feeling safe at work.” For those who wish to transition to their chosen gender, there are two stages of treatment; stage 1 and stage 2 hormone treatment.

Stage 1 involves ‘puberty blockers’ which prevent the onset of adulthood, such as boys’ breaking voices and breast development in girls. Stage 2 is the application of ‘cross-sex hormones’ – oestrogen or testosterone – which encourage the body to develop traits characteristic of the new gender. Unfortunately, due to the Family Law Act, people like Scarlet must seek the court’s approval to access stage 2 treatment, even when everyone agrees that it’s right. “The stress as a parent is kind of a loss of control.

The idea of going to court was a very confronting one. The choice is taken out of your hands, so imagine how that feels for a child going through this, for whom it’s their own life and identity that is being literally put on trial,” said Madeleine, Scarlet’s mum. Seeing more and more families trying to deal with an unnecessarily stressful process, Justice Connect launched the Stage 2 Access project. By matching families with experienced pro bono lawyers, and working with the Family Court to streamline proceedings, we hope to take the trauma out of accessing necessary treatment. Since the launch, we have seen a doubling in the number of people coming to us for help, as more families learn of the project. “Working with Justice Connect has been fantastic. Right from the first phone call that I made to contact you we were just treated with a lot of respect and dignity. And that’s something I care about a lot for all of us,” said Madeleine.<sup>72</sup>

➔ Relevant to: LGBTIQ+ people, Children and Young People

<sup>71</sup> CLCNSW 2015-16 Annual Report, p.28. Accessible at: <[http://www.clcnsw.org.au/cb\\_pages/annual\\_reports.php](http://www.clcnsw.org.au/cb_pages/annual_reports.php)>

<sup>72</sup> Justice Connect 2016-17 Annual Report, p.11

<[https://www.justiceconnect.org.au/sites/default/files/Justice%20Connect%20AR2016-17.final2\\_.pdf](https://www.justiceconnect.org.au/sites/default/files/Justice%20Connect%20AR2016-17.final2_.pdf)>

### *Case Study – Workplace Harassment*

“Jasper worked for a large chain store. One day he arrived at work to find his profile from a gay Internet dating site put on the walls of the employee’s area of the store. Jasper was embarrassed. The profile included a picture so that there would be no question that it was his.

Jasper took them down but was aware that his colleagues had seen them. Jasper informed management and was informed that as the posters were taken down there would be no further action. The Inner City Legal Centre provided Jasper with ongoing advice about remedies available under employment law. With ongoing assistance from the Inner City Legal Centre Jasper was able to settle his matter.”<sup>73</sup>

➔ Relevant to: LGBTIQ+ People

### *Case Study – Harassment*

“Joe is an Indigenous man living in the inner city. Joe is gay and lives alone in his Housing NSW accommodation. Joe’s neighbour started harassing him on the basis of his sexuality. Joe’s neighbour regularly walked past his house calling Joe names at the top of his voice. This distressed Joe, particularly because the last time the neighbour called out names Joe noticed that the family across the road was out the front and he was sure they had heard. Joe tried to ignore this behaviour but the behaviour continued.

ICLC provided Joe with advice and representation. We attended court with Joe and were successful in obtaining an interim Apprehended Violence Order. We went to final hearing and Joe opted for undertakings rather than going through with the hearing. Joe has not experienced the harassment since undertakings were provided.”<sup>74</sup>

➔ Relevant to: LGBTIQ+ People, Aboriginal and Torres Strait Islander People

### *Case Study – Partner’s Estate*

“Hassan had recently lost his partner of 20 years. Hassan asked that we assist him in accessing his late partner’s superannuation and small estate. Hassan’s late partner’s family did not

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<sup>73</sup> ICLC 2010-2011 Annual Report, p.20 <[http://www.iclc.org.au/documents/iclc\\_ar10\\_11.pdf](http://www.iclc.org.au/documents/iclc_ar10_11.pdf)

<sup>74</sup> Ibid, p.21

acknowledge their son's relationship and aggressively denied its existence - even in the face of clear evidence to the contrary. ICLC provided Hassan with advice about his entitlements and assistance in pursuing these. Hassan 's late partner's family engaged a solicitor to protect the very small estate. ICLC acted for Hassan and briefed a barrister. However, Hassan was too distressed to continue, as he did not want to go through the process of 'proving' his 20-year relationship."<sup>75</sup>

➔ Relevant to: LGBTIQ+ People

### *Case Study – Victims Compensation*

"An Aboriginal man, originally from interstate, who identifies as being bi-sexual, moved to Sydney 3 months ago with his partner and 2-year-old daughter. They are now homeless. The department of community services removed the child shortly after they arrived. We spoke to him about victim's compensation for an attack he sustained. He was not aware that he could claim anything. He was hesitant, as he feared there could be repercussions if he were to make a claim."<sup>76</sup>

➔ Relevant to: LGBTIQ+ People, Children and Young People, Aboriginal and Torres Strait Islander People

### *Case Study – Apprehended Domestic Violence Order*

"Around 19 years ago, Carl Grimes and Paul Spector met as neighbours but their interactions became intimate soon after. When Paul suggested that he wanted to move in with Carl, Carl was not ready to take the next leap of commitment. Paul did not handle this news well and began to leave rubbish bags at Carl's doorstep and threatened to break into his house. After few more similar attempts, Paul gave up and disappeared from Carl's life.

"In 2014, Paul contacted Carl. Paul asked whether Carl would forgive him for how he had left things between them. When Carl's response was in the negative, Paul tried to spoil Carl by leaving gifts at Carl's doorstep. However, when Carl did not respond to Paul, he began to leave rubbish bags at Carl's doorstep, threaded knife through the door and accessed electricity meter room to switch off power.

<sup>75</sup> Ibid, p.21

<sup>76</sup> ICLC 2011-2012 Annual Report, p.13 <[http://www.iclc.org.au/documents/iclc\\_ar11\\_12.pdf](http://www.iclc.org.au/documents/iclc_ar11_12.pdf)>

“When Paul’s behaviour escalated, Carl contacted the NSW Police and Safe Relationship Project Solicitor, Cedric Hassing, at the Inner City Legal Centre for assistance. NSW Police charged Paul with multiple accounts of criminal offences and initiated Apprehended Domestic Violence Order (ADVO) proceeding.

“Cedric liaised with NSW Police on behalf of Carl throughout the interim and final ADVO process. Cedric continued to assist Carl when Paul appealed his criminal charges and ADVO. The District Court imposed Community Treatment Order by placing Paul under medication for his mental health treatment and continued the ADVO to protect Carl.”<sup>77</sup>

➔ Relevant to: LGBTIQ+ People

### *Case Study – Domestic Assault*

“William was hospitalised from being assaulted by his domestic partner Dr Zach Canning. The NSW Police attended St Vincent’s Hospital due to injuries sustained by William and, subsequently, issued a provisional ADVO and charged Zach with DV assault occasioning actual bodily harm.

“After William was discharged from the hospital, he approached the Safe Relationship Project Solicitor, Cedric Hassing, at the Inner City Legal Centre. Cedric advised William about the court procedure and liaised with ACON’s DV Team to arrange counselling and support services for him.

“Zach denied that he had hurt William and disputed the charges. William was subpoenaed to give evidence at the Court. William was highly distressed and vulnerable as he was being re-exposed to his experience of domestic violence through the court process. Cedric advised and assisted William throughout this process and tirelessly liaised with NSW Police and Prosecution on William’s behalf.

“Unfortunately, the presiding magistrate dismissed the charges against Zach as His Honour was not persuaded beyond a reasonable doubt that the offence had been committed. The interim ADVO was also dismissed.”<sup>78</sup>

➔ Relevant to: LGBTIQ+ People, People Who Experience Family Violence

<sup>77</sup> Provided by ICLC Principal Solicitor Hilary Kincaid.

<sup>78</sup> Ibid.

### *Case Study – Domestic Assault*

“Malcolm was a masculine country boy who worked as a bartender and Nicholas was a property developer from the North Shore. Nicholas and Malcolm fell for their differences and have been in a domestic relationship for about two years.

“On one Sunday, Nicholas and Malcolm engaged in a heated argument about breaking up with each other. Their argument escalated and Malcolm head-butted Nicholas in the forehead and then punched him. NSW Police attended their residence and took Malcolm into custody. NSW Police charged Malcolm with assault and initiated Apprehended Domestic Violence Order (ADVO) proceeding on behalf of Nicholas.

“Nicholas was referred to Safe Relationship Project Solicitor, Cedric Hassing, at the Inner City Legal Centre. During their conversation, Nicholas opened up about Malcolm’s ongoing verbal abuse and threats to out Nicholas at his workplace. Cedric warmly referred Nicholas to ACON for domestic violence counselling. Cedric provided ongoing support to Nicholas throughout the ADVO process – from preparing victim’s statement, liaising with the NSW Police and attending the court with Nicholas.

“Malcolm was convicted of the criminal offence and final ADVO was made for a period of 12 months.”<sup>79</sup>

➔ Relevant to: LGBTIQ+ People, People Who Experience Family Violence

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<sup>79</sup> Provided by ICLC Principal Solicitor Hilary Kincaid.

### *Case Study – Domestic Assault*

“Dave was on his way home when he met Sam. Dave and Sam had an instant chemistry that drew them to each other. Dave invited Sam over to his place to have a few alcoholic beverages. Sam responded positively. After sharing couple of beverages together, things became intimate between Dave and Sam. During their intercourse, Sam suddenly turned cold and restrained Dave’s arm then punched him in the face repeatedly. Every time Dave tried to break free, Sam’s behaviour escalated.

“After few more minutes of struggle, Sam began to get dressed and took Dave’s mobile phone. Sam punched Dave in the face, breaking his nose, and smashed a beer bottle to threaten Dave. Dave does not remember what happened next but, at some point, Sam calmed down and Dave bolted for the door – screaming for help while Sam fled the scene. Dave contacted the Police. Sam was subsequently picked up by the Police and charged with criminal offences.

“Dave was referred to DV counselling by the Police and the DV Counsellor at ACON referred him to the Safe Relationships Project Solicitor (‘SRPS’) at Inner City Legal Centre. Cedric Hassing (SRPS) provided ongoing support to Dave throughout the court process and advised Dave about his legal rights and obligations. Cedric also assisted him in Victim’s Services application and liaised with the Prosecution until the matter was finalised.

“Sam pleaded guilty to his criminal charges and was sentenced to a term of 18 months imprisonment.”<sup>80</sup>

➔ Relevant to: LGBTIQ+ people

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<sup>80</sup> Provided by ICLC Principal Solicitor Hilary Kincaid.



### *Case Study – Estate Planning*

“I am not going to be around for much longer. The cancer has advanced and it is taking over my body. I applied for income protection some time before I had cancer, I disclosed my HIV to the insurer. I just wanted to make sure that my boy would be ok if anything should happen to me HALC has made sure that when I go at least my son will have a bit of money to help him get by”<sup>81</sup>

➔ Relevant to: LGBTIQ+ People, People Living with Disability

### *Case Study – HALC Services*

#### HALC Client Reflections

- "My doctor told me about HALC and they represented me at the Refugee Review Tribunal. The first thing that the Tribunal said in my hearing was that they had read my extra statement that HALC had prepared, and their submissions and that they believed me. I knew from that moment on that everything would be ok. My case was very complicated but I knew that HALC was always working hard to help me"<sup>82</sup>
- "It didn't seem like my kind of thing, the idea of lawyers and courts sounded messy, and I even thought might make things worse. But the services they offered were lifesaving. They linked me up with a 'GLO' police officer – a gay and lesbian liaison officer, who was really supportive and understanding. They helped me to file an accurate police report and they contacted the tenancy management and explained my situation. With an Apprehended Violence Order in place, after this I started to get my life back"<sup>83</sup>

➔ Relevant to: Recent Arrivals to Australia, LGBTIQ+ People

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<sup>81</sup> Ibid, p.15

<sup>82</sup> HALC 2014-2015 Annual Report, p.18 <2014-2015 Annual Report: <http://halc.org.au/wp-content/uploads/2012/10/DLA-2014-2015.pdf>>

<sup>83</sup> Ibid, p.21

### *Case Study – Workplace Discrimination*

“Our client, Dorothy, was an Aboriginal woman who worked in a specialised role for a large organisation. She experienced many personal crises during the same year, including health issues, and caring responsibilities for family members. During this time she felt that she was discriminated at work for needing time off for her health and her responsibilities to her family. Her requests for flexible arrangements were not handled sensitively and transparently by management, causing her emotional distress during an already difficult time in her life.

“She filed a disability and carer’s responsibilities discrimination complaint at the ADB, and KLC represented her at the conciliation conference. An agreement was reached at conciliation including, most importantly, an acknowledgement from the organisation that it should have handled things a lot better. The result has made a significant difference in our client’s confidence in her career and in her employer.”<sup>84</sup>

➔ Relevant to: Aboriginal and Torres Strait Islander, People Living with Disability

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<sup>84</sup> Kingsford CLC 2016 Annual Report, p.12  
<[http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/2739%20klc\\_AR\\_WEB.pdf](http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/2739%20klc_AR_WEB.pdf)>

### *Case Study – Unfair Dismissal Dispute*

"We received a Lawmail from 16-year-old Alexis and her Aboriginal Legal Service (ALS) lawyer. Alexis had been accused of stealing at work. Her ALS lawyer was defending her against criminal charges (which were eventually dropped), but could not assist Alexis with her employer's threat to fire her as she was not funded to provide legal assistance on employment matters.

Alexis asked whether she could be fired over unsubstantiated accusations of stealing. She was particularly concerned about her financial stability because she lived in an area with few other employment opportunities, especially for someone her age.

"We initially advised Alexis on the legal aspects of unfair and constructive dismissal, and then corresponded with Alexis' employer on her behalf. After it became clear that Alexis' employer was not willing to engage in informal dispute resolution, we prepared an application for an unfair dismissal complaint and made sure that it was submitted before the very short time limit lapsed. We then connected Alexis with a Legal Aid lawyer who agreed to provide ongoing representation and case management."

– *NCYLC Solicitor*

➔ Relevant to: Children and Young People

### *Case Study – Risk of Family Violence*

"We received a phone call from a school counsellor on behalf of 15-year-old Eden. She had left home and had been staying with a friend due to family violence. However, school holidays were approaching and her friend's family was no longer able to care for her. Eden and her counsellor were worried that she was at risk of further violence or homelessness over the holidays.

We provided Eden with legal and practical advice about leaving home before the age of 18 in circumstances of family violence. We also managed to find a youth refuge where Eden could stay for the holidays and connected her with counselling services that she could access during this period to ensure that she had appropriate support. We also connected Eden with domestic violence support services for an upcoming court hearing involving her family.

"Through our communications with Eden, her counsellor, and a broad support network including child protection services, housing services and police, we were able to supplement the basic support provided by the school with legal and practical advice for Eden over the course of three months."

– *NCYLC Solicitor*

➔ Relevant to: Children and Young People, People Who Experience Family Violence